

SUPERIOR COURT IN THE STATE OF CALIFORNIA
COUNTY OF YOLO

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff,

Case CR-F -08-0003355

vs.

MINUTE ORDER

MARCO ANTONIO TOPETE
Defendant.

Judge: PAUL K. RICHARDSON
Clerk: JENNIFER HICKS
Reporter: KERI CRITTENTON
Date: APRIL 16, 2010

HEARING: MOTION TO CONTINUE JURY TRIAL

Counsel for the People: JEFF REISIG, DISTRICT ATTORNEY
GARRETT HAMILTON, DEPUTY DISTRICT ATTORNEY

Counsel for Defendant(s): HAYES GABLE, III
THOMAS PURTELL

8:33 AM

Defendant and counsel present in open court and ready to proceed.

The Court addressed defense counsel's motion to continue jury trial.

Counsel for the defendant, Hayes Gable submitted on his written motion.

The Court granted the motion to continue and vacated the trial date currently set on May 17, 2010. The jury trial was rescheduled to begin on June 14, 2010.

The Court addressed counsel for the defendant's motion to change venue that had previously been filed.

Counsel for the defendant requested the motion be heard on May 21, 2010. The Court so agreed.

The Court proposed the following briefing schedule for motions in limine: any motions are to be filed by May 17, 2010 with oppositions filed by May 28, 2010 and any reply briefs to be filed by

June 7, 2010.

The Court inquired of counsel their time estimate for motions in limine.

Counsel for the defendant, Mr. Gable inquired if the Court would need motions in limine for both the guilt and penalty phases.

The Court stated only motions for the guilt phase would be needed.

Counsel for the defendant, Mr. Gable stated that the briefing schedule is agreeable to the defense and that they would try their best to have everything filed in time.

All counsel agreed that motions in limine would take approximately (4) four days. Counsel were also agreeable to the timelines set by the Court for filing of motions.

The Court inquired if counsel had a time estimate for the motion to change venue.

Counsel for the defendant, Thomas Purtell estimated (2) two hours for defense counsel's argument.

Counsel for the People, Jeff Reisig estimated (1) one hour for their argument.

The Court inquired of counsel what the estimated length of trial would be from opening statements on.

Both counsel agreed on a 6-8 week time frame which would include the penalty phase, if needed.

Counsel for the defendant, Mr. Gable requested the Court allow additional time between each phase of the trial, if a penalty phase is needed.

The Court addressed the issue of jury selection.

All counsel requested the Court allow sequestered jury selection.

Counsel for the defendant, Mr. Gable stated that he had recently completed a capital case in which the jury selection had been non-sequestered in groups of (6) six. He stated that it ended up taking longer than on trials where the jury selection had been sequestered. Mr. Gable further stated that sequestered voir dire examination would be appropriate for this case and that the process could go quickly.

Counsel for the People, Mr. Reisig agreed that a sequestered jury for voir dire examination would be appropriate. He further stated that it is more efficient and prevents cross-contamination.

The Court inquired of counsel how many prospective jurors they foresee being brought back per half-day if jury selection were to be sequestered.

Counsel for the People, Mr. Reisig stated that upwards of (10) ten prospective jurors could be called in per half-day session.

Counsel for the defendant, Mr. Gable stated that it would also be much more convenient for the prospective jurors if selection were sequestered.

The Court agreed to proceed with the sequestered jury voir dire recommended by counsel on both sides.

The Court stated that counsel's proposal would be to start sequestered jury selection on June 21, 2010 with the first week designated for hardships and filling out jury questionnaires. The second, and any subsequent weeks would be designated for sequestered voir dire examination. The Court stated that typical jury panels have consisted of approximately 45-60 jurors.

The Court inquired of counsel how many prospective jurors they expect to need initially and how many for the final day of jury selection. The Court also invited suggestions to the number of alternate jurors.

Counsel for the People, Mr. Reisig stated the People would request (4) four alternate jurors.

The Court stated that given the proposed length of trial (6-8 weeks), the Court felt more comfortable with (6) six alternate jurors.

Counsel for the People, Mr. Reisig stated that in prior capital trials, upwards of 200 prospective jurors were qualified and only a portion were brought in for the final day of selection. In this case, counsel for the People would request to have 150-200 prospective jurors qualified.

The Court inquired of counsel what their thoughts are on how quickly they believe they could get through hardship requests.

Counsel for the People, Mr. Reisig stated that hardships could go fairly quickly.

The Court addressed the possible use of a jury hardship questionnaire. Copies of the proposed questionnaire were handed to counsel for review.

Counsel for the defendant, Mr. Gable stated that he had a form he could provide to the Court for consideration.

The Court stated that this issue could be discussed further on the May 21, 2010 court date.

The Court asked counsel of their thoughts as to the hours and days per week of operation during trial.

Counsel for the defendant, Mr. Gable requested that the Court be in session (4) four days per week from 9:00 am to 4:30 pm.

Counsel for the People, Mr. Reisig agreed that the hours of 9:00 am to 4:30 pm were appropriate but preferred a 5-day week so as not to prolong the length of the trial. Mr. Reisig suggested the Court have alternating Fridays off.

The Court asked counsel's opinion on having an 8:30 am start time, rather than 9:00 am.

Mr. Gable suggested a 4-day work week if the Court's intention was to begin at 8:30 am.

Mr. Reisig stated that an 8:30 am start time would be okay so long as the jury was not expected to be present until 9:00 am, thereby allowing counsel and Court to discuss issues outside their presence.

The Court would take all issues into consideration and make a determination at a later time closer to trial.

The Court addressed the jury questionnaire, specifically the narrative and nature of charges. The Court is still inclined to use the narrative submitted by the People with changes which were stated on the record.

The Court and counsel discussed the summary statement that is to be given to prospective jurors. The Court stated that each side could give a brief preview statement of the case if they wished.

Counsel agreed that a script describing the guilty and penalty phase processes would be preferable.

The Court asked that counsel collaborate and provide a final proposed script for the Court to present prior to June 14, 2010.

The Court inquired of each counsel any concerns they have with discovery.

Counsel for the People, Mr. Reisig stated that they have received no discovery from the defense at this point.

Counsel for the defendant, Mr. Gable stated that they had subpoenaed records from the California Department of Corrections that were to be in the court file today, but that CDC needed two additional weeks to comply. Mr. Gable requested the matter be placed on calendar as a non-appearance court date on April 30, 2010 at 8:30 am for receipt of the records.

Counsel for the People, Mr. Hamilton inquired of defense counsel if they would be ready to turn over any discovery of those records to the People at that time.

Counsel for the defendant, Mr. Gable stated that if they intend to use the documents for trial then they would be discovered to the People.

Mr. Hamilton stated that he would be available on April 30, 2010 if the court would allow for a

court appearance regarding those records.

The Court would be inclined to address the discovery issue on May 21, 2010 along with the change of venue motion.

Counsel for the People were concerned that the next appearance would be within 30 days of the date set for trial and time could be lost if there is a discovery issue.

Counsel for the defendant, Mr. Purtell stated that the People could subpoena their own documents from the California Department of Corrections if they so wish.

The Court stated that the matter would be kept on calendar for May 21, 2010 and the Court would be flexible if additional time is needed by the People should there be discovery provided by defense less than 30 days prior to trial.

The Court asked counsel if additional pages would need to be added to the questionnaire. The Court also inquired of who would be making the copies of the blank questionnaires.

Counsel for the People, Mr. Reisig stated that the People would provide blank copies to the Court. He further stated that once the questionnaires were completed, both sides could alternate making copies. Defense agreed to that arrangement and the Court as well.

The Court inquired of any additional courtroom equipment that would be needed by either side during trial.

Counsel for the defendant, Mr. Gable asked if the Court would have an audio/visual cart and a projector available.

Counsel for the People, Mr. Reisig offered the use of their overhead projection system (Elmo) to defense during trial.

Mr. Gable stated that a screen would be needed. The Court asked counsel to inform the Court of what they might need at trial.

The Court stated that in limine motions would begin on June 14, 2010 for (4) four days with sequestered jury selection beginning on June 21, 2010. The motion for change of venue, further discovery issues, and any further jury selection discussion would be heard on May 21, 2010 at 8:30 am.

The Court stated that a randomized list of the prospective jurors would be given to counsel prior to the time of the peremptory challenge process.

Counsel for the People inquired on which date the Court plans on initiating the final day of jury selection as counsel would need a few days, prior to that date, to review their randomized list of prospective jurors.

The Court stated that adequate time would be given.

Counsel for the People, Mr. Hamilton asked if the Court was aware of which department would be utilized for trial.

The Court replied that it is still unsure in which courtroom the trial would be held.

Counsel for the People requested to be notified prior to April 30, 2010 for subpoena purposes.

The Court stated that counsel would be notified as soon as possible.

Counsel for the People stated they would be satisfied with a voicemail message once the department is known.

The matter was continued to FRIDAY, MAY 21, 2010 at 8:30 AM in DEPARTMENT 6 for motion to change venue, further discovery issues, further jury selection discussion, and other issues including the jury questionnaire.

The matter will also be placed on calendar FRIDAY, APRIL 30, 2010 at 8:30 AM in DEPARTMENT 6 as a non-appearance by all parties for compliance of subpoenaed documents.

The defendant remained in the custody of the Sheriff's Department with bail set at NO BAIL.

9:34 AM

Court adjourned.

frmlmins.s (FMO)